

June 26, 2002

Sent via e-mail, hand delivery and/or U.S. Mail

Mary L. Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: Mass Migration Guidelines, D.T.E. 02-28

Dear Secretary Cottrell:

On April 19, 2002, the Department of Telecommunications and Energy ("Department") issued an Order opening a Mass Migrations Collaborative. The Department initiated an industry collaborative to adapt for use in Massachusetts the Mass Migration Guidelines approved by the New York Public Service Commission ("NYPSC"). Mass Migration Guidelines are used when a competitive local exchange carrier exits the market, or a portion of the market, and has a significant customer base to migrate to other carriers. The Department-sponsored collaborative was assigned to develop a set of draft guidelines to submit to the Department for its approval. On June 7, 2002, the Massachusetts Mass Migrations Collaborative submitted Draft Guidelines to the Department.

By an Order of Notice dated June 10, 2002, the Department opened the adjudicatory phase of the proceeding and requested comments on the Draft Guidelines. The Attorney General submits this letter as his comments on the Draft Guidelines.

The Attorney General commends the Department for undertaking this initiative and creating an amicable working environment in which carriers, consumers, and regulators could consider the complexities that arise when a carrier stops providing services to its customers. As we saw in several recent Department dockets, customers and acquiring carriers alike may be placed in unenviable positions when a carrier chooses to discontinue its services, and there is a need for a prompt, efficient mass migration of telephone lines to other carriers to avoid service interruption.¹

¹ See, e.g., *Broadview Networks Investigation*, DTE 02-14 (Attorney General's Brief, February 21, 2002); *Network Plus Investigation*, DTE 02-15 (Attorney General's Reply Brief, March 15, 2002).

The Draft Guidelines were modeled, in large part, on existing guidelines used in New York, Texas, and other states, and have been tailored to fit Massachusetts' needs. This report mandates procedures and time lines for carriers who are exiting the market and include a 90-day notice to the Department and a 60-day notice requirement to consumers. Currently, customers are supposed to receive at least 30 days' notice when their carrier is leaving the market. Under the Guidelines, consumers will have 40 days to select a new carrier or be assigned to the acquiring carrier, if any. If there is no acquiring carrier, the customer's service will be transformed to a "soft dial tone" 10 days from the termination date, which allows the customer to dial only 911 until the termination date, and then the service is terminated.

While these Guidelines are intended to be all-inclusive, two aspects of the Guidelines raise particular concerns. First, these guidelines will not address digital subscriber line ("DSL") carriers and, unlike in New York, there are no exiting carrier guidelines in Massachusetts for DSL carriers. One explanation for this differential treatment that arose during discussions in the industry collaborative is that technological differences based on the data transmission process necessitate separate treatment. If that is the case in Massachusetts, then the Department should open a new collaborative with the purpose of creating additional guidelines that will cover DSL carriers, perhaps through proceedings similar to those occurring in New York.

Second, the guidelines are effective only if the carriers abide by them and if the Department enforces them as mandatory, not permissive, guidelines. The experiences of the New York Public Service Commission and the Department show that when a carrier becomes financially distressed, the carrier may be reluctant or unable to comply with the 90-day and 60-day notice provisions. This reluctance arises because of constraints imposed by the carrier's lending institutions, a bankruptcy court, wholesale creditors, prospective acquiring carriers, or other factors. The Department must be willing to require carriers to adhere to the timetable and, if necessary, open special expedited investigations where carriers cannot, or will not, abide by the notice requirements.

With these two suggested modifications, the Attorney General urges the Department to adopt the June 7, 2002 Draft Guidelines as mandatory mass migration guidelines for exiting telecommunications carriers.

Sincerely,

Karlen J. Reed
Assistant Attorney General
Utilities Division
200 Portland Street, Fourth Floor
Boston, MA 02114

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**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Proceeding by the Department of Telecommunications and Energy on)
its own Motion to Develop Requirements for Mass Migrations of)
Telecommunications Service End-Users)

D.T.E. 02-28

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing documents upon each person designated on the official service list in this proceeding by either hand delivery, mail, and/or e-mail.

Dated at Boston this 26th day of June 2002.

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